Baneesh vs State of Kerala

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Court : Kerala

Decided On : Feb-07-2022

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Bail Appl./495/2022

Appellant : Baneesh

Respondent : State of Kerala

Judgement :

B.A.No.495/2022 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. MONDAY, THE 7TH DAY OF FEBRUARY 2022 / 18TH MAGHA, 1943 BAIL APPL. NO. 495 OF 2022 FILE NO.INS-08/2021-22(3) OF THE STATE GOODS AND TAX DEPARTMENT, THRISSUR PETITIONER/ACCUSED: BANEESH AGED 43 YEARS KOLANGARAYILL HOUSE, AYILAKKAD POST EDAPPAL, MALAPPURAM PIN 679576 MALAPPURAM, PIN - 679576 BY ADVS. PRASUN.S A.KUMAR N.A.RETHEESH RESPONDENT/COMPLAINANT-STATE: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF

KERALA ERNAKULAM, PIN - 682031 BY ADVS. PUBLIC PROSECUTOR SHRI.SAJJU.S., SENIOR G.P. SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR DIRECTOR GENERAL OF PROSECUTION GOVERNMENT PLEADER SHRI.MOHAMMED RAFIQ, SPL.G.P. (TAX)

OTHER PRESENT: ADV MOHAMMED RAFIQ-SPL GP(TAX) THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B.A.No.495/2022 2

ORDER

This is an application for regular bail.

2. The petitioner is the accused in a proceeding initiated as per

File No.INS-08/2021-22(3) of the State Goods and Tax Department, Thrissur, alleging commission of offence under Sections 132(1)(b) of the Central GST Act and also the State GST Act.

3. The allegation against the petitioner is that the petitioner

obtained bogus registrations, created fictitious invoices and documents evidencing transport of goods without actual transport to enable the claim of ineligible input tax credit and thereby cheated the Government of a total of 96.67 crores, as per current estimate.

4. The learned counsel appearing for the petitioner would submit

that the petitioner is absolutely innocent in the matter. It is submitted that the allegation that the petitioner has obtained bogus registrations and has created fraudulent documents enabling the availment of wrongful input tax credit is, according to the petitioner, nothing but a figment of the

imagination of the officers concerned. The learned counsel for the petitioner also submits that the offences under Section 132 (1), (a), (b) & (c) are compoundable offences. It is submitted that the petitioner has been in custody from 21.12.2021 and has completed 48 days in custody. It is submitted that the continued detention of the petitioner is not necessary for the purposes of any investigation.

5. Sri. Mohammed Raffiq, the learned Special Government

B.A.No.495/2022 3 Pleader (Taxes) vehemently opposes the grant of bail. He submits that a fraud of gigantic proportions has been committed by the petitioner. It is submitted that the petitioner is accused in similar offences by the Tax Department in the State of Karnatraka as well. It is submitted that the extent of fraud is only being unearthed and if the petitioner is released on bail, there is every chance that he will influence material witnesses and facilitate the disappearance of evidence which would implicate him in the crime. The learned Special Government Pleader also points out that the contention of the learned counsel for the petitioner that the offence registered against the petitioner is a compoundable offence, is absolutely fallacious. It is submitted that only the first offence can be compounded and when the petitioner is involved in a series of offences including one registered by the State Taxes Department in the Karnataka State, there is no scope for compounding. It is submitted that even assuming that the offence is compoundable, the compounding application can be considered only if the petitioner makes an application and only after the extent of tax involved is quantified by the Department. It is also submitted that 150% of the amount has also to be paid as compounding fee. It is submitted that over and above the compounding fee, the tax element has also to be remitted and considering the huge extent of fraud in this case, the amount will easily come to about Rs.250 to 300 Crores. It is submitted, with reference to the judgments of the Supreme Court in Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation; (2013) 7 SCC 439, Serious Fraud Investigation Officer v. Nittil Johari and another; 2019(9 SCC 165,

B.A.No.495/2022 4 State of Bihar v. Deokaran Nenshi and another; (1972) 2 SCC 890, State of Gujarat v. Mohanlal Jitamalji Porwal; (1987) 2 SCC 364, Leena Mahesh Motewar v. Republic of India; 2019 SCC OnLine Orissa 84, Neer Yadav v. State of Uttar Pradesh and another;

(2016) 15 SCC 422 (paragraphs 12 &13) & Himanshu Chandravadan

Desai v. State of Gujarat; (2005) 13 SCC 234 and Amit Beriwal v. State of Odisha; 2020 SCC OnLne Orissal 546 and judgments of the Gauhati High Court in B.A.No.1714/2021, that financial frauds and white collar crimes have to be considered seriously and bail cannot be granted in the normal manner. It is also pointed out with reference to the order of the District and Sessions Court, Mangaluru, (paragraph 13 of the order in Crl.Misc.No.328/2021) that the conduct of the petitioner has been deprecated by that Court and it has also been found that he failed to answer

to the summons, despite repeated notices being issued to him. It is submitted that failure to respond to notices, a crime has been registered against the petitioner by the Karnataka State Taxes Department. Reference is also made to orders of various High Court which indicate that in cases of offence under Section 132 of the Central GST Act and State GST Act, the bail cannot be granted as a matter of course. It is submitted that the

investigation in this case is painstaking and time consuming as the investigation is spread across various States considering the magnitude and the nature of the transactions involved.

6. I have considered the contentions raised.

7. With reference to the facts and circumstances of the case, it is,

B.A.No.495/2022 5 no doubt, true that the petitioner has been accused of a very serious offence involving substantial amounts. It is also to be noted that since the amount

of fraud alleged against the petitioner is gathered from e-way bills generated at the instance of the petitioner, the amounts of fraud alleged are not fanciful. However, I cannot lose sight of the fact that the petitioner has been in custody from 21.12.2021 and has completed 48 days in custody. The maximum period for which he can be remanded at this stage is 60 days, if the final report is not filed. This is not disputed. Further, it is clear from the judgment of Constitution Bench of the Supreme Court in Sushila Aggarwal and others v. State (NCT of Delhi) and another; (2020) 5 SCC 1, that co-operation with the investigation etc., can be ensured by imposing appropriate conditions. It is also clear from that judgment that, if the petitioner attempts to interfere with the investigation or to tamper with the evidence etc. in any manner or to attempt to influence any witnesses, it is open to the prosecuting agency to approach the Court for cancellation bail or for permitting the arrest of the accused again. It is also clear from that

judgment that even for the purposes of recovery under Section 27 of the

Evidence Act, the limited custody of the accused will be sufficient. Having regard to the above, I am of the view that the petitioner can be granted bail.

8. In the result this bail application is allowed. It is directed that the petitioner shall be released on bail, subject to the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court; B.A.No.495/2022 6

(ii) The petitioner shall deposit a sum of Rs.10,00,000/- (Rupees ten lakhs only) as security before the State Tax Oficer (IB), SGST Department, Kerala, Thrissur;

(iii) The petitioner shall report before the Investigating officer in File No.INS-08/2021-22(3) of the State Goods and Tax Department, Thrissur,evey Monday and Saturday at 11 a.m., until further orders;

(iv) The petitioner shall not attempt to interfere with the investigation, influence or intimidate any witness in File No.INS-08/2021-22(3) of the State Goods and Tax Department, Thrissur ;

(v) The petitioner shall surrender his passport before the jurisdictional

Court. If the petitioner does not have a passport, he shall execute an affidavit to that effect and file the same before the jurisdictional court within seven days of release on bail

(vi) The petitioner shall not involve in any other crime while on bail. If any of the aforesaid conditions are violated, the Investigating officer in File No.INS-08/2021-22(3) of the State Goods and Tax Department, Thrissur, may file an application before the jurisdictional Court for cancellation of bail. Sd/- GOPINATH P. JUDGE acd B.A.No.495/2022 7 APPENDIX OF BAIL APPL. 495/2022 PETITIONER ANNEXURES Annexure1 THE TRUE PHOTOCOPY OF THE ORDER DATED 06.01.2022 IN C.M.P.NO.2572 OF 2021 OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE (ECONOMIC OFFENCES), COURT, ERNAKULAM Annexure2 THE TRUE PHOTOCOPY OF THE ORDER DATED 17.01.2022 IN CRL.M.C.NO.51 OF 2022 OF THE SECOND ADDITIONAL SESSIONS JUDGE, ERNAKULAM